HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.19555 OF 2004

DATED: 20.9.2005

Between:

M. Satyanarayana

… Petitioner

and

The Executive Engineer, R&B Division,

Miryalaguda, Nalgonda District

and others.

… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.19555 OF 2004

ORDER:

The petitioner was employed as a Watchman and Roller Cleaner, i.e. work charged employee in the R & B Department. He worked, as such, from 3.5.1979 to 31.5.1981. On the said date, he was terminated from service without notice, opportunity, or compliance with Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act'). Aggrieved thereby, the petitioner filed I.D.No.354 of 1987 challenging his termination, under Section 2-A (2) of the Act. By the award dated 25.4.1989, the Labour Court, Guntur, set aside the termination of the petitioner's service and directed the respondent, i.e. 2nd respondent herein to reinstate the petitioner to service and with continuity of service. As the petitioner did not approach the Labour Court nor had filed his claim expeditiously, but had delayed the institution of the claim, the Labour Court directed that the petitioner would be entitled only for 1/3rd of back wages, within a month from the date of notification (of the award).

Against the award of the Labour Court, the 2nd respondent filed W.P.No.5874 of 1992. The writ petition was dismissed by this court on 7.2.2003. Pending the writ petition, the 1st respondent reinstated the petitioner to service with effect from 15.12.1994.

The petitioner was notified that he was due to retire on superannuation by 30.6.2004. Challenging the entries of his date of birth in the service register, the petitioner states, he has filed O.A.NO.3518 of 2004 before the Andhra Pradesh Administrative Tribunal, which is pending. After he was retired w.e.f. 30.6.2004, the petitioner submitted a representation/application to the respondents on 17.8.2004 for settlement of his pension. By the order dated 7.9.2004, the 1st respondent rejected the petitioner's claim for pension on the ground that (as far as this court is able to decipher the intent of the respondent) the petitioner had not completed 10 years of service. The petitioner challenges the order in this writ petition on the ground that as the award of the Labour Court, Guntur dated 25.4.1989 in I.D.No.354 of 1987

directed his reinstatement into service with continuity of service, the petitioner is entitled to count his entire service from 3.5.1979 till the date of his factual retirement on 30.6.2004, and he is entitled to pensionary benefits on that basis.

The 1st respondent has filed a counter affidavit. The counter affidavit admits the factum of the award of the Labour Court in I.D.No.354 of 1987, the filing of W.P.No.5874 of 1992, the dismissal of the writ petition and the reinstatement of the petitioner as a Watchman w.e.f. 14.12.1994. The representation submitted by the petitioner for pensionary benefits, by his letter dated 17.8.2004, is also admitted. It is, however, reiterated in the counter affidavit that the petitioner did not complete 10 years of service as on the date of his retirement, i.e. 30.6.2004, "as he was appointed as watchman w.e.f. 15.12.1994 which is short of around 6 months for computation of service of 10 years to allow the pensionary benefits". He justifies the order passed by him on 7.9.2004, declining grant of pensionary benefits to the petitioner. Curiously, the 1st respondent further contends (in paragraph No.5) that the petitioner was reinstated as a watchman on 15.12.1994 and if he had any grievance against the said appointment, he could have approached the High Court and that he cannot approach this court after retirement.

Having regard to the clear and unequivocal obligation of the respondents qua the award of the Labour Court dated 25.4.1989 in I.D.No.354 of 1987, the petitioner is entitled to count his entire service from 3.5.1979 till the date of his retirement on 30.6.2004. The order of the 1st respondent dated 7.9.2004, declining grant of pensionary benefits to the petitioner reckoning his service only from 15.12.1994 (when he was reinstated as a watchman), is a wholly illegal order. Even assuming that the order dated 7.9.2004 was passed by the 1st respondent without due application of mind, his filing of the counter affidavit reiterating the same position amounts to wanton and conscious disregard of the award of the Labour Court dated

25.4.1989 in I.D.No. 354 of 1987, which, undoubtedly, is as sovereign an expression of the will of this Republic, as could be. The 1st respondent is obligated as a public servant to conform, without demur, to a judicial mandate expressed as an award. Conscious and recidivist rejection of the award constitutes a conduct inconsistent with the holding of a public office. The initial disregard of the award dated 25.4.1989, coupled with a reiteration of the same stand in the counter affidavit and emphasizing such irrational position by stating that the petitioner's service should be reckoned only from 15.12.1994, clearly permits but the inference that the 1st respondent is deliberately flouting the award of the Labour Court, to which he was a party and despite the affirmation of the award by this court by the dismissal of W.P.No.5874 of 1992.

On the analysis above, the petitioner is entitled to the relief as claimed. The writ petition is accordingly allowed. The respondents are directed to compute and pay the petitioner, pensionary benefits as he is eligible to, reckoning his service continuously from 3.5.1979 till the date of his retirement on 30.6.2004, with utmost expedition and in any event, within a period of four weeks from today. Having regard to the consistent and conscious decision of the respondents, in particular the 1st respondent to ignore and resist compliance with the award of the Labour Court in I.D.No.354 of 1987, a conduct established by the order dated 7.9.2004 and emphasized by the plea taken in the counter affidavit too, this court considers it appropriate to allow the writ petition with costs quantified at Rs.25,000/-. The costs shall be paid by the State and it is open to the State to recover it from such of its officer or officers, who have taken a position in the impugned order as well as in the counter affidavit, in clear defiance of the rule of law. No order as to costs.

20.9.2005

NOTE: Furnish the order copy

by Monday.

B/o

cvm